

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of Applications of |) | |
| |) | |
| NEVADA MDS, INC. |) | File Nos. BPIFB-20010816AAN |
| |) | BPIFH-20010816AAM |
| For Authority to Construct and Operate a New |) | |
| High Power Signal Booster Station and Response |) | |
| Station Hub Associated with the Instructional |) | |
| Television Fixed Service Station KZH33, Las |) | |
| Vegas, Nevada. |) | |
| |) | |

ORDER ON RECONSIDERATION

Adopted: April 19, 2004

Released: April 20, 2004

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau:

1. In this *Memorandum Opinion and Order*, we address the Petition for Reconsideration and Reinstatement¹ filed on February 24, 2003, by Nevada MDS, Inc. (Nevada MDS) seeking reconsideration of the dismissal of the above-captioned applications for authority to construct and operate a new high power signal booster station and a new response station hub associated with the Instructional Television Fixed Service (ITFS) Station KZH33, Las Vegas, Nevada.² For the reasons stated below, we grant the Petition and reinstate Nevada MDS' applications.

2. *Background.* An ITFS signal booster station is intended to amplify and simultaneously retransmit the signals it receives from one or more ITFS stations using the same channels as the received signals, or it can originate signals on ITFS channels.³ It is used in the areas that are too large to be served by a single ITFS station, and it must be located within the protected service area of the main ITFS station.⁴

3. In response to the demands for data, telephony and broadband access services in the competitive marketplace, the Commission adopted new rules on September 17, 1998, to enhance service to consumers and permit both MDS and ITFS licensees to provide wireless two-way communications on MDS and ITFS frequency bands.⁵ On June 30, 2000, the Mass Media Bureau released a public notice

¹ Petition for Reconsideration (filed Feb. 24, 2003) (Petition).

² File Nos. BPIFB-20010816AAM and BPIFH-20010816AAN (filed Aug. 16, 2001).

³ 47 C.F.R. § 74.985(a).

⁴ 47 C.F.R. § 74.985(b).

⁵ In the Matter of Amendment of Parts 21, and 74 of the Commission's Rules and Regulations to enable Instructional Television Fixed Service and Multipoint Distribution Service Licensees to Engage in Fixed Two-Way Transmission. *Report and Order* in MM Docket No. 97-217, File No. RM-9060, 13 FCC Rcd 19112 (1998) (subsequent history omitted).

providing detailed information regarding application filing procedures for ITFS and MDS two-way high-power signal booster stations, response station hubs and I channel transmission licenses.⁶

4. Clark County School District (Clark County) was the licensee of ITFS station KZH33 on the E group channels⁷ in Las Vegas, Nevada. Nevada MDS was the licensee of MDS station WNT724 on channels F3 and F4⁸ at the same location. On December 7, 2000, Clark County and Nevada MDS simultaneously filed applications to exchange channels E1 and E2 for Channels F3 and F4.⁹ On August 16, 2001, Clark County filed the above-captioned applications for a high-power signal booster station on Channel E2 and a response station hub associated with its ITFS station KZH33.¹⁰ On August 22, 2001, the Channel Swap Applications were granted.¹¹ The channel swap was consummated on October 17, 2001.¹² As a result, Nevada MDS was now licensed to operate on Channels E1 and E2, while Clark County was now licensed to operate on Channels E3, E4, F3, and F4. On November 9, 2001, Nevada MDS amended, *inter alia*, the captioned applications to reflect that it was now the applicant.¹³

5. On November 5, 2002, the captioned applications were returned for additional information regarding antenna structure registration.¹⁴ The Return Letters were sent to Clark County and specified that Clark County had 60 days from the letter date to file amendments to applications and provide the required information.¹⁵ Clark County did not respond to the Commission's request within the specified time frame. On January 23, 2003, the applications were dismissed for failure to respond to the Return Letters.¹⁶ On February 24, 2003, Nevada MDS filed the instant Petition.

6. *Discussion.* In its Petition, Nevada MDS claims that (1) it is licensed for channel E2, (2) it acquired all pending applications on channel E2 from Clark County as a result of channel swap consummated on October 22, 2001.¹⁷ Nevada MDS states that it was not aware of any request from the

⁶ Mass Media Bureau Announces Further Information on Application Filing Procedures and Announces Availability of Electronic Filing for Two-Way Multipoint Distribution Service and Instructional Television Fixed Service, *Public Notice*, 15 FCC Rcd 11466 (MMB 2000).

⁷ The E group channels consist of the frequencies 2596-2602 MHz, 2606-2614 MHz, 2620-2626 MHz, and 2632-2638 MHz. *See* 47 C.F.R. § 21.901.

⁸ Channels F3 and F4 consist of the frequencies 2626-2632 MHz, and 2638-2644 MHz, respectively. *See* 47 C.F.R. § 21.901.

⁹ File Nos. BLNPIF-20001207AAB and BLNPIF-20001207AAC (Channel Swap Applications).

¹⁰ File Nos. BPIFB-20010816AAM and BPIFH-20010816AAN.

¹¹ Public notice of the grants was given on August 27, 2001. *See* Mass Media Bureau Instructional Television Fixed Service Multipoint Distribution Service Actions, Report No. 487 (rel. Aug. 27, 2001).

¹² *See* Letter from Todd M. Stansbury, Wiley Rein & Fielding LLP, to Magalie Roman Salas, Secretary, Federal Communications Commission. (filed Oct. 22, 2001) (Consummation Letter).

¹³ *See* Letter from Dawn Alexander, Esq. to Magalie Roman Salas, Secretary, Federal Communications Commission. (filed Nov. 9, 2001) (Amendment).

¹⁴ *See* Letters from Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, to Tom Axtell, Clark County School District. (dated Nov. 5, 2002) (Return Letters).

¹⁵ *Id.*

¹⁶ *See* Letters dated January 23, 2003, from Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, to Tom Axtell, Clark County School District. (dated Jan. 23, 2003) (Dismissal Letters). Public notice of the dismissal was given on February 12, 2003. *See* Wireless Telecommunications Bureau Site-By-Site Action, Report No. 1413, *Public Notice* (rel. Feb. 12, 2003).

¹⁷ *See* Consummation Letter, Amendment.

Commission, because the Return Letters were sent to Clark County.¹⁸ Given that Nevada MDS had amended the applications to report that it was the applicant and that the Return Letters were sent to Clark County, we agree with Nevada MDS that it never received proper notice of the return or that additional information was required to process its applications. Accordingly, we will grant the Petition and reinstate Nevada MDS' applications.

7. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405 and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration and Reinstatement filed by Nevada MDS, Inc, on February 24, 2003 IS GRANTED.

8. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 405, and Sections 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, that the licensing staff of the Broadband Division SHALL REINSTATE AND PROCESS the applications of Nevada MDS, Inc. (File Nos. BPIFB-20010816AAM and BPIFH-20010816AAN).

9. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. § 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

John J. Schauble
Deputy Chief, Broadband Division
Wireless Telecommunications Bureau

¹⁸ Petition at 2.